

May 2, 2005

**HAND DELIVERED**

Mr. Charles Terreni  
Chief Clerk of the Commission  
Public Service Commission of South Carolina  
Synergy Business Park, Saluda Building  
101 Executive Center Drive  
Columbia, SC 29210

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SO. CAROLINA  
COMMISSION  
2005 MAY -2 AM 11:50

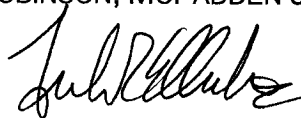
**Re: MCImetro Access Arbitration – Farmers, Home, PBT & Hargray  
Docket No. 2005-67-C**

Dear Mr. Terreni:

Enclosed for filing please find Time Warner Cable Information Services, (South Carolina), LLC's reply to the letter in opposition filed by Farmer, Home, PBT, & Hargray in the MCI arbitration. Please note that this issue is on the agenda for tomorrow's meeting of the Commission. By copy of this letter I am serving the same on all interested parties. Please stamp the extra copy provided as proof of filing and return it with our courier. Should you have any questions, please have someone on your staff contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.



Frank R. Ellerbe, III

/bds  
Enclosure

cc/enc: Julie Y. Patterson, Esquire (via email & U.S. Mail)  
M. John Bowen, Jr. (via email & U.S. Mail)  
Darra W. Cothran, Esquire (via email & U.S. Mail)  
Kennard B. Woods, Esquire (via email & U.S. Mail)  
Wendy B. Cartledge, Esquire (via email & U.S. Mail)  
Dan F. Arnett, Chief of Staff (via email & U.S. Mail)  
Ms. Daphne Werts (via email)

**BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA**

**Docket No. 2005-67-C**

FILED  
2005 MAY -2 AM 11:50  
SC PUBLIC SERVICE  
COMMISSION

In re: )  
)  
**Petition of MCImetro Access Transmission )  
Services, LLC for Arbitration of Certain )  
Terms and Conditions of Proposed )  
Agreement with Farmers Telephone )  
Cooperative, Inc.; Home Telephone Co., )  
Inc.; PBT Telecom, Inc.; and Hargray )  
Telephone Co. concerning Interconnection )  
and Resale under the Telecommunications )  
Act of 1996 )**  

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**TIME WARNER CABLE  
INFORMATION SERVICES,  
(SOUTH CAROLINA), LLC's  
REPLY TO OPPOSITION  
OF ILECs**

Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable ("TWCIS"), hereby replies to the letter in opposition of Farmers Telephone Cooperative, Inc. ("Farmers"); Hargray Telephone Company ("Hargray"); Home Telephone Company, Inc. ("Home"); and PBT Telecom, Inc. ("PBT") (collectively "ILECs") in the MCImetro Access Transmission Services, LLC ("MCI") arbitration docket. TWCIS would reply as follows:

1. The South Carolina Administrative Procedures Act applies to this proceeding by definition. A "'contested case' means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing." S.C. Code § 1-23-310(3). MCI petitioned the Commission to arbitrate pursuant to Section 252(b) of the Telecommunications Act of 1996, 47 U.S.C.A. § 252(b). Section 252 requires the Commission to hear and rule on a petition for arbitration within nine months after the local exchange carrier received a request to

arbitrate. This proceeding is a “contested case” which will affect the legal rights of TWCIS, MCI, and the ILECs.

2. The ILECs are well aware of the existing agreement between TWCIS and MCI. As noted in TWCIS’ petition to intervene these same ILECs participated in TWCIS’ initial certification docket. The existing contractual relationship between TWCIS and MCI which provides that MCI carry TWCIS’ traffic over the public switched telephone network was explained to this Commission in that docket. These ILECs raised no objection to TWCIS’ plans to offer service in this state through its contract with MCI. One of the primary issues in the present arbitration involves the ILECs’ objection to MCI providing wholesale services to TWCIS in the fashion described by TWCIS in its certification proceeding. TWCIS’ legal rights will be directly affected by the decisions made during this proceeding. The decisions will directly impact TWCIS’ provisioning of services to its customers in the ILECs service area. TWCIS’ interest in this arbitration is unique and it should be granted full rights as a part of record in order to protect its interests.

3. In a contested case, all parties must be afforded an opportunity for hearing after notice of not less than thirty days. S.C. Code Ann. § 1-23-320 (2005). The Courts have interpreted “contested case” as one in which an agency is required by law to determine a party’s rights after an opportunity for a hearing. *Garris v. Governing Board of the S.C. Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48, 52 (Sup. Ct. 1999). To not allow TWCIS to participate as a party of record while the Commission adjudicates issues which directly affect its contractual rights would violate the Administrative Procedures Act.

4. The Supreme Court has held that Article I, Section 22, requires an

administrative agency to give procedural due process to parties that come before it even when the matter is not a “contested case” as defined in the APA. *Garris v. Governing Board of the S.C. Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48, 52 (Sup. Ct. 1999).

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard;...nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Const. Art. I, § 22.

5. Administrative agencies are required to meet minimum standards of due process by S.C. Constitution Article I, Section 3. “Due process is flexible and calls for such procedural protections as the particular situation demands.” *Stono River Environmental Protection Assoc. v. S.C. DHEC*, 305 S.C. 90, 406 S.E. 2d 340, 342 (Sup. Ct. 1991) *citing Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The *Stono* decision also indicated that constitutional due process provisions, apart from the APA, are sufficient to confer the rights to notice and for an opportunity to be heard. *Id*

6. The ILECs note that the Commission has previously denied a petition to intervene filed by the Consumer Advocate in an arbitration proceeding. Unlike the Consumer Advocate, TWCIS has a unique status in relation to this arbitration. TWCIS has an established agreement with MCI which will be directly affected by the decisions made in this proceeding. The ILECs are fully aware of the existing agreement between TWCIS and MCI. In the *Stono* case, the Court struck down limited participation in an administrative proceeding. The *Stono* parties were present at the hearing but were denied the right to present evidence and cross examine witnesses regarding the merits of the case. *Stono*, 406 S.E. 2d at 342. The Court held that their due process rights

were denied as a result.

7. If TWCIS is not allowed to intervene it will be substantially prejudiced by the administrative process. *Leventis v. S.C.DHEC*, 340 S.C. 118, 530 S.E.2d 643, 650 (Ct. App. 2000). These ILECs are well aware of the existing agreement between TWCIS and MCI. One of the primary issues in dispute is whether MCI will be able to provide wholesale services to TWCIS. South Carolina recognizes that third party beneficiaries have rights in contracts created for their benefit. *Bob Hammond Construction Co., Inc. v. Banks Construction Co.*, 312 S.C. 422, 440 S.E.2d 890, 891 (Ct. App. 1994). The disposition of this arbitration may as a practical matter impair or impede TWCIS' ability to protect its interests in the current agreement with MCI.

Dated this 2<sup>nd</sup> day of May, 2005.

ROBINSON, MCFADDEN & MOORE, P.C.



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BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

DOCKET NO. 2005-67-C

SC PUBLIC SERVICE COMMISSION  
2005 MAY -2 PM 11:50  
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In Re: )  
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Inc.; PBT Telecom, Inc.; and Hargray )  
Telephone Co. concerning Interconnection )  
and Resale under the Telecommunications )  
Act of 1996 )

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CERTIFICATE OF SERVICE

This is to certify that I, Mary F. Cutler, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the persons named below the **Time Warner Cable Information Services, (South Carolina), LLC's Reply to Opposition of ILECs** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

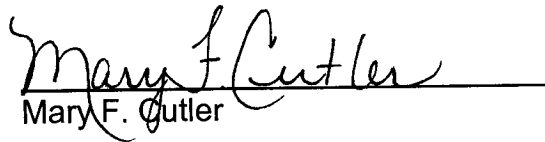
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Wendy Cartledge  
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Dated at Columbia, South Carolina this 2<sup>nd</sup> day of May 2005.

  
Mary F. Cutler